

Appl. No. 10/535,297; Docket No. AT 020067
Amdt. dated January 10, 2007
Response to Amdt. Dated October 25, 2006

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REMARKS/ARGUMENTS

Claims 1-11 are pending in the application.

Applicant has amended the claims to remove reference numbers. The claim(s) were not amended in order to address issues of patentability and Applicant respectfully reserves all rights they may have under the Doctrine of Equivalents. Applicant furthermore reserves his right to reintroduce subject matter deleted herein at a later time during the prosecution of this application or continuing applications.

The §102 Rejection

Claims 1, 2, 4, 6-7, and 11 are rejected under 35 U.S.C. §102(b) as being anticipated by *Frasl* (US2001/0010725).

Applicant respectfully traverses the rejection, in that a case for anticipation has not been made.

In particular, Applicant's claimed feature of "a *central cup-shaped* [emphasis added] depression is present in the region of the membrane axis, which depression is bounded by a cup bottom wall and is open towards the first membrane side," is not present in *Frasl*. In contrast with Applicant, *Frasl* shows a "diaphragm 17 further has an inner zone 21 which, in the present case, is concave with respect to the acoustic free space situated in front of the from side 19 of the diaphragm 17. (Paragraph 0021, lines 4-7)." Furthermore, review of *Frasl* reference's figures show marked differences between those of Applicant. These are two vastly different electroacoustic transducer devices.

Consequently, *Frasl* does not anticipate Applicants' invention.

Per MPEP §2131:

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently describe in a single prior art reference." *Verdegal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim.

In view of the foregoing, Applicants respectfully assert that the rejection under 35 USC §102(b) be withdrawn. Therefore, independent claim 1 and dependent claims 2, 4, 6-7, and 11 are allowable over the cited reference.

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The §103 Rejections

Claim 5 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Frasl* in view of *Mallina* (US1870417).

Applicant asserts that one skilled in the art of electroacoustic transducers would not look to combine with *Frasl* (ca. 2001) with *Mallina* (ca. 1932). *Mallina* relates to a diaphragm for sound reproduction of the early 20th century. *Mallina* could not possibly foresee the development of the transducer art, as discussed in *Frasl*. The structure of *Frasl* and distinctly differing structure of *Mallina* would likely not be combinable. These two references do not suggest or teach their combination.

It should be noted that "obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion or incentive supporting the combination. *ACS Hospital Systems, Inc. v. Monteffiore Hospital*, 732 F. 2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir 1984)."

In view of the foregoing, Applicant request that the rejection be withdrawn. Therefore, claim 5 is allowable over the cited references.

Claims 3 and 8-9 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Frasl* in view of *Japanese Patent* (402057097).

Applicant respectfully traverses the rejection. Review of *Japanese Patent*, shows that the diaphragm structure 2 and its variations 3 (of Figs. 1-8) are unlike that of Applicant's claimed features, as discussed *supra*. Thus, alone or in combination, *Frasl* and *Japanese Patent* does not suggest or teach Applicant's invention. Therefore, dependent claims 3, 8-9, are allowable over the cited references.

Claim 10 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Frasl* in view of the *Japanese Patent* as applied to claim 3, and further in view of *Hoffman* (US1040294). Review of *Hoffman* (ca. 1912) shows that "in these drawings 10 indicates a sound box of ordinary construction and 11 is the diaphragm embodying this invention, 12 being the usual stylus connected at the center thereof by connection 13 (col. 1, lines 38-41)." In that *Hoffman* relates to an acoustic-mechanical system, one skilled in the art would not be motivated to combine *Hoffman* with either *Frasl* or *Japanese Patent*, in that *Frasl* and *Japanese Patent* relate to *electroacoustic* transducers.

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Thus, in view of the foregoing, Applicant requests that the 103 rejection of claim 10 be withdrawn. Therefore, claim 10 is allowable over the cited references.

Conclusion

Applicant believes he has addressed the Examiner's concerns. A timely Notice of Allowance is earnestly requested.

Please charge any fees other than the issue fee and credit any overpayments to Deposit Account 50-4019.

Respectfully submitted,

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By Peter Zawilski
Peter Zawilski
Registration No. 43,305
(408) 474-9063

Correspondence Address:

NXP, B.V.
Intellectual Property Department
(formerly Philips Intellectual Property & Standards)
1109 McKay Drive; Mail Stop SJ41
San Jose, CA 95131 USA

CUSTOMER NUMBER: 65913